

# **EXHIBIT A**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 Hyla Gold, Individually and on  
4 behalf of all others similarly  
situated as class  
representative,

Plaintiff,

v.

07 CV 8204 (DLC)

7 CLEAR CHANNEL COMMUNICATIONS,  
8 INC. and CLEAR CHANNEL OUTDOOR  
9 HOLDINGS, INC.,

Defendants.

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11 New York, N.Y.  
12 March 7, 2008  
10:00 a.m.

13 Before:

14 HON. DENISE L. COTE,

District Judge

16 APPEARANCES (Telephonic)

17 OUTTEN & GOLDEN  
Attorneys for Plaintiff  
18 BY: PIPER HOFFMAN

19 MORGAN, LEWIS & BOCKIUS  
Attorneys for Defendants  
20 BY: CHRISTOPHER PARLOW  
MICHAEL PUMA

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1 (In chambers)

2 THE COURT: Good morning, counsel.

3 MR. HOFFMAN: Good morning, your Honor.

4 MR. PARLOW: Good morning, your Honor.

5 THE COURT: I have you on speaker phone because I have  
6 a court reporter with me and my law clerk. Let's briefly take  
7 appearances for the plaintiff.

8 MS. HOFFMAN: Piper Hoffman of Outten & Golden.

9 THE COURT: And for the defendants.

10 MR. PARLOW: Christopher Parlow, P-A-R-L-O-W, and  
11 Michael Puma, P-U-M-A, Morgan, Lewis & Bockius, LLP, 101 Park  
12 Avenue, New York, New York, 10178 for the defendants.

13 THE COURT: Thank you.

14 We're holding this conference call because I received  
15 a letter of March 3rd from plaintiff's counsel concerning what  
16 they characterize as a discovery dispute.

17 I understand, Mr. Parlow, that you got permission to  
18 fax a letter to my chambers today. However, it was not just  
19 two pages and so I haven't read it and will not consider it.

20 MR. PARLOW: Okay.

21 THE COURT: So I want to explain, counsel, I know  
22 you're aware of the limit on two pages. There is actually a  
23 reason for that. When there are complicated issues I give the  
24 parties an opportunity to be heard, as exemplified by this  
25 conference call today, and I don't want counsel to spend their

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1 client's money, their time or my energy in lengthy letter  
2 writing campaigns.

3 I prefer if there is an issue that requires  
4 significant Court review that you briefly describe your  
5 positions in a letter, brief letter, no longer than two pages,  
6 then I'll hear you out. And if it's terribly complicated I'll  
7 even bring you in and we'll have a conference in the robing  
8 room and deal with the issues. But I think that ultimately is  
9 more efficient and cost effective for your clients.

10 MR. PARLOW: Your Honor, this is Mr. Parlow. May I  
11 make one brief responsive point?

12 THE COURT: Not to argue with the rule.

13 MR. PARLOW: No, not to argue with the rule at all, I  
14 think it's great rule, I think it saves clients and the Court a  
15 lot of time and clients a lot of money. I was acting out of an  
16 abundance of caution because in another case I had with a judge  
17 in the Southern District but up in White Plains what was framed  
18 as a discovery dispute over contact information which I  
19 approached with putting in a short letter ended up in an order  
20 that the plaintiffs be permitted to send out notice to a class.  
21 And so instead of what I believed was supposed to be a  
22 discovery dispute it ended up being a decision on what should  
23 have been a fully briefed motion for class and collective  
24 certification.

25 So what we put in the first paragraph in our letter

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1 was that although the Court limits to two pages letter  
2 submissions regarding discovery disputes, what the plaintiff  
3 characterizes as a discovery dispute is actually an attempt to  
4 have a notice issue decided without full blown briefing. And  
5 what we were concerned about is a request for contact  
6 information for a broad group of people, including people who  
7 we don't believe are properly encompassed with any class of  
8 collective action, and if the Court were to award that contact  
9 information it's really a decision much akin to the preliminary  
10 decision that would be reached in a collective action or the  
11 ultimate decision in a class. And so we approached it from  
12 that standpoint. We don't think that what is framed before you  
13 today is a discovery dispute.

14 THE COURT: Great. So we're going to address the  
15 issue now. Again, there was nothing that you said, though,  
16 that suggests to me that you shouldn't have kept your  
17 submission to just two pages.

18 So you have really jumped ahead to address the merits,  
19 which is the purpose of this conference call, but let me frame  
20 the issue as I understand it based on the plaintiff's  
21 submission. It appears that counsel have agreed during this  
22 first phase of fact discovery, which is to end on April 11th,  
23 that they will be given contact information for a sampling of  
24 putative class members, and also data reflecting the times when  
25 those folks logged in and logged out of their computer

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1 networks. And the dispute, as I understand it, is whether that  
2 same agreement can be applied to a particular category of  
3 employees who bear the title local account executives. And the  
4 plaintiffs wish this information to test the proposition that  
5 they are covered or not under what is called an outside  
6 salesperson exemption which the defendant intends to rely upon.

7 Now I may not have correctly characterized it from the  
8 defendants' point of view, but is that your position,  
9 Ms. Hoffman?

10 MS. HOFFMAN: My position is slightly different, your  
11 Honor. I don't believe that defendant has agreed to provide  
12 contact information for any members of the class. So in a way  
13 we have a two-tiered issue here. The first issue is, number  
14 one, are local account executives going to be treated as part  
15 of the class for the discovery phase; and then number two, what  
16 data will defendant produce for the class as we're defining it?

17 THE COURT: Well, you say -- I mean obviously we'll go  
18 to the correct state of the record, but you say at the top of  
19 page 2: While defendants have agreed to provide contact  
20 information and log in, log out data for some class members, et  
21 cetera, they have refused to do so with respect to one  
22 category.

23 So what did I misunderstand there?

24 MS. HOFFMAN: Your Honor, I believe that was a  
25 misstatement in my letter, for which I apologize.

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1 But Mr. Parlow, am I correct, defendants have not  
2 agreed to provide any contact information?

3 MR. PARLOW: Your Honor, don't want to jump in unless  
4 it's okay to.

5 THE COURT: Okay. Well, so Ms. Hoffman, great. So  
6 instead where we are is that you want a sampling for contact  
7 information and log in, log out information?

8 MS. HOFFMAN: We agreed with defendant to accept a  
9 sampling of log in, log out information. We would like contact  
10 information for the entire putative class.

11 THE COURT: Okay. Mr. Parlow?

12 MR. PARLOW: Your Honor, in order to have settlement  
13 discussions and have them be productive we have agreed to  
14 provide a sampling of the log in, log out data for the 81  
15 people who we have identified as being within the national  
16 account executive category, and that includes not only people  
17 with a certain title but anyone who over a six-year period for  
18 New York purposes and a three-year period for FLSA purposes had  
19 any title in which any portion of their duties and  
20 responsibilities involved national account functions. So we  
21 tried to be overly inclusive even though all those people might  
22 not at the end of the day fall squarely within that category.

23 THE COURT: Now Mr. Parlow, I didn't hear one word  
24 that you said or the phrase. You said you're providing this  
25 data for national account executives not simply for those who

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1 bore what title?

2 MR. PARLOW: That title, title of national account  
3 executive, because there are six or seven different titles  
4 across the country and different markets. And so we didn't  
5 want to just look at someone who was semantically labeled  
6 national account executive. So there are six or seven other  
7 titles within which individuals might perform some of those  
8 national account duties, and we have included those within the  
9 81 people in a chart that has an identifier for the person, at  
10 plaintiff's request, the hire date, the termination date, all  
11 of the compensation information for that person or those  
12 persons for a six-year period and their title, and that's where  
13 the plaintiffs will be able to see the titles are all  
14 different.

15 We also agreed, in addition to all that information,  
16 to produce log in, log out data on a sample basis because it's  
17 very hard to collect. And unilaterally we don't think it's  
18 that helpful, but we wanted plaintiffs to be able to look at it  
19 and to reach their own conclusions as to whether the burden of  
20 sample data for more of the 81 people would be warranted.

21 We have also agreed -- and Ms. Hoffman is correct, we  
22 haven't offered contact information for all 81 people.

23 THE COURT: You have or haven't?

24 MR. PARLOW: Have not. But what we offered is after  
25 plaintiffs reviewed the chart and could look at the diversity

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1 that if they wanted further information regarding those people  
2 we would work to get that. We also offered 30(b)(6)  
3 depositions so they can analyze the data in the chart and talk  
4 about hours and duties. And we didn't get there, but I also  
5 don't have a problem with once they reviewed the chart, taken  
6 the 30(b)(6) depositions, if they believed they needed to speak  
7 to one or more of the individuals within the 81 then I think it  
8 would be appropriate if they wanted to do so.

9 But our objection is to anything regarding the local  
10 account executives who we had never believed were part of the  
11 class, and from the first moment of settlement discussions I  
12 told plaintiff's counsel we will not discuss them. We have no  
13 interest in local account executives being part of the  
14 settlement. We will litigate that. No Court or agency has  
15 ever held that any local account executives who sell  
16 advertising space are not exempt. So we believe this entire  
17 process was to be focused on the 81 people we described in our  
18 first conference with you.

19 And so we're at loggerheads over the attempt to expand  
20 it. And if it is going to be expanded then we would not be  
21 engaging in settlement discussions.

22 THE COURT: Okay. Now let me understand, Mr. Parlow,  
23 then I will of course give you, Ms. Hoffman, an opportunity to  
24 be heard. The 81, as far as you're concerned, is not a sample  
25 of the national account executives but instead all of the

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1 employees who would fall within that category, whatever title  
2 they might bear.

3 MR. PARLOW: Yes, there are 81 across the United  
4 States any time during the two applicable statute of  
5 limitations periods, and there are 16 who we have separately  
6 identified in the chart as being in New York over a six-year  
7 period, even though currently today there are only two  
8 individuals who would fall within the New York class. And we  
9 did it that way, your Honor, because the case currently  
10 involves both a collective action allegation and a class  
11 allegation -- a New York class, sorry.

12 THE COURT: Right.

13 MR. PARLOW: And it's everybody.

14 THE COURT: Okay. So if I understand it correctly,  
15 also with the prior stipulation, which I believe I so ordered,  
16 the defendant has agreed to waive the statute of limitations  
17 period in this lawsuit.

18 MR. PARLOW: For anybody, your Honor, who would opt in  
19 under the FLSA. And that would include anyone within that  
20 group of 81, and if it need be at some point in time, expand  
21 this to the local AE's, that would apply to them as well. We  
22 didn't limit it.

23 THE COURT: So that's the point I wanted to get at.  
24 If ultimately settlement discussions fail and we go into full  
25 fledged discovery and briefing with respect to notice and I

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1 decide as a legal matter that local account executives can be  
2 brought into this lawsuit and notice is given to them and  
3 contact information is therefore provided, that at that point  
4 they will not be facing any statute of limitations problem  
5 beyond those that they faced at the time the stipulation was  
6 signed.

7 MR. PARLOW: With one caveat, your Honor, the  
8 stipulation provides that that tolling period is to expire two  
9 weeks after the settlement conference. However, if that were  
10 the way this unfolded we would agree, and I can agree on the  
11 call now, that that tolling would be extended for those  
12 purposes until such time as your Honor were permitted to  
13 analyze and rule upon those questions that you just raised.  
14 Otherwise it would not be fair.

15 THE COURT: I think that's a significant point, and I  
16 appreciate you recognizing that, Mr. Parlow, because if the  
17 clock is going to start ticking then we should have the motion  
18 practice and get it resolved promptly.

19 MR. PARLOW: Absolutely. And that is what we  
20 discussed during that first conference. And I have been the  
21 one that asked that that be slightly delayed and we would not  
22 try to use that to our unfair advantage.

23 THE COURT: Okay. So Ms. Hoffman, with the  
24 understandings that have just been placed on the record today  
25 that in effect the statute of limitations period will be tolled

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1 through motion practice for the local account executives, why  
2 shouldn't we accept the two-stage litigation plan that counsel  
3 have agreed upon to see if this case can be settled essentially  
4 between the period of mid April and mid June.

5 MS. HOFFMAN: The problem, your Honor, is that the way  
6 that defendant has just laid it out we would be having  
7 settlement discussions in the near future only for national  
8 account executives and not for local account executives who  
9 make up the majority of the class. And we're not in a position  
10 to settle the case on behalf of just a fraction of our class.

11 THE COURT: Do you have a named plaintiff who is a  
12 local account executive?

13 MS. HOFFMAN: Our named plaintiff did serve as a local  
14 account executive and we have from the beginning included them  
15 in the complaint and in discussions with defendants' counsel.  
16 While they have said they would not include local account  
17 executives in their data, we have said that we intend for them  
18 to include them and we will do what is necessary to get them  
19 included.

20 THE COURT: So in essence, Ms. Hoffman, your position  
21 is if the defendants don't include it then you don't want to  
22 engage in settlement discussions now, you prefer to go to  
23 briefing on the notice issue and get that resolved and press on  
24 across the board with respect to both national and local  
25 account executives.

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1 MS. HOFFMAN: Unfortunately, yes. As much as I would  
2 love to go into settlement discussions at this point and  
3 resolve this case quickly, as I said, I can't do that for just  
4 a fraction of the class.

5 THE COURT: So Mr. Parlow, the ball is in your court.  
6 We revised the schedule now and set a motion schedule for  
7 briefing the notice issue and get that resolved promptly with  
8 the stay of the statute of limitations until that's resolved,  
9 or you agree to provide sampling information for local account  
10 executives to see if that assists in early settlement  
11 negotiations.

12 MR. PARLOW: Well, your Honor, I don't want to end  
13 things without a little exploration. You said sampling  
14 information. The log in, log out data we think is not going to  
15 be very productive, but I wouldn't want things to blow up over  
16 that. So if what this takes to have a conference with Judge  
17 Dolinger over the national account executive is providing some  
18 sampling data of log in and log out on the local AE's as well,  
19 that's a small issue to us, and we certainly could do that.

20 THE COURT: Well, why don't counsel engage in a meet  
21 and confer today and if you can resolve this, great. Otherwise  
22 I'll hear from you later this afternoon on a continuation of  
23 this conference call and we'll set a revised schedule for the  
24 case.

25 MR. PARLOW: Okay.

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1 THE COURT: Thank you, counsel.  
2 MR. PARLOW: Thank you, your Honor.  
3 MS. HOFFMAN: Thank you, your Honor.  
4 (Proceedings adjourned)  
5 (Continued on next page)

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1 (Telephone conference continued)

2 (Robing room conference)

3 THE COURT: Counsel, I have you on the speaker phone.  
4 We have a court reporter and my law clerk is with me.

5 For the plaintiff we have Piper Hoffman and for the  
6 defendant Mr. Parlow and Mr. Puma.

7 Let me ask you, Ms. Hoffman, we had an initial  
8 conference this morning on the record. I had a brief telephone  
9 conference after that without a court reporter in which the  
10 parties reported to me that they had been unable to reach an  
11 agreement and therefore I called for a court reporter to  
12 return.

13 Are the parties' positions, Ms. Hoffman, much as was  
14 described to me during the brief phone call before the court  
15 reporter returned or has there been a further change?

16 MS. HOFFMAN: There has been no change, your Honor.

17 THE COURT: Okay.

18 So as I understood it, the parties had failed to reach  
19 agreement with respect to the scope of discovery that would  
20 take place before settlement discussions and therefore I had  
21 suggested that the plaintiff proceed to brief providing notice  
22 to potential members of the collective action. Ms. Hoffman  
23 said she did not want to do that. She wanted instead to brief  
24 the narrower issue of whether or not there would be discovery  
25 with respect to class of employees called local account

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1 executives. I indicated that I did not want a motion with  
2 respect to discovery; that plaintiff's counsel either had a  
3 named representative who could support motion for notice or  
4 they did not, and at that point I said we would call for a  
5 court reporter.

6 Ms. Hoffman, is there anything you want to add?

7 MS. HOFFMAN: There is.

8 Your Honor, it's the plaintiff's burden to prove that  
9 we are entitled to notice under 216(b) and under Rule 23 and in  
10 order to carry out that burden it helps enormously for us to  
11 have discovery. We do have an adequate named representative  
12 who is entirely able to explain the facts and the situation and  
13 support our motion in this case. But there is no reason we  
14 should be forced to rely exclusively on our one named  
15 plaintiff. It's routine in cases like this to have discovery  
16 before we get to the point of briefing the issue of notice and  
17 without that plaintiffs are hobbled because it is our burden to  
18 prove those issues. So I think it's premature at this point to  
19 go straight into briefing the notice issue.

20 THE COURT: Well, Ms. Hoffman, I am not going to give  
21 you discovery of the contact information because that is the  
22 whole point of whether or not the notice can be provided.

23 MS. HOFFMAN: With all due respect, your Honor, that  
24 is not the point of notice. The point of getting approval for  
25 notice is, first of all, to have court approval and send a

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1 mailing to the class members that this is a matter that is  
2 approved by the court and, second of all, to inform them about  
3 the case and what their options and rights and duties are.

4 What we are proposing is not a mass notice to the  
5 class. We are seeking to interview individual members of the  
6 class about the facts and if defendants are correct, then what  
7 we will find through those interviews is that in fact these are  
8 exempted individuals. But the mere fact that defendants are  
9 defending themselves, are saying that in fact these individuals  
10 are exempt and are not entitled to overtime, of course they are  
11 doing that. That is their job. That is what they would do in  
12 any case, but that alone doesn't mean we should be cut off from  
13 any ability to prove our case.

14 And I would also suggest that I have no doubt that  
15 defendant will submit in their opposition to any notice motion  
16 what we call happy camper decks, which means they will speak  
17 with the local account executives themselves and they will  
18 collect as many declarations as they can from members of this  
19 class talking about why they believe that defendants' position  
20 is correct. So this would allow defendant to use that contact  
21 information as both a sword and a shield because they won't  
22 give us access to it but they would exploit it themselves.

23 THE COURT: Mr. Parlow.

24 MR. PARLOW: I have no comment, your Honor.

25 THE COURT: I am sorry?

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1 MR. PARLOW: I have no comment, your Honor.

2 THE COURT: Okay.

3 So, Ms. Hoffman, I am not going to order the defendant  
4 to provide the contact information for local account  
5 executives.

6 What do you want to do?

7 MS. HOFFMAN: Well, in that case I would like to just  
8 proceed with discovery.

9 THE COURT: What does that mean?

10 MS. HOFFMAN: That means that, for example, all the  
11 discovery that defendants say they have collected so far they  
12 have not yet produced to me. I would like to see the discovery  
13 at least about the few class members that they are willing to  
14 produce it about.

15 THE COURT: Okay.

16 Well, Ms. Hoffman, as I understand it the schedule  
17 that counsel had agreed upon was a first phase of discovery to  
18 be completed by April 11 to be followed by settlement  
19 discussions and then a conference with me on June 13 if the  
20 case wasn't resolved.

21 Are you saying that you don't want to phase discovery  
22 that way, you want full discovery, to the extent you believe  
23 you are entitled to it, to begin now?

24 MS. HOFFMAN: Your Honor, your ruling effectively  
25 reduces the size of my class. So at this point I would say

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1 let's continue with the schedule that we had laid out for the  
2 national account executives and I will take the discovery that  
3 defendant offered about local account executives, including the  
4 30(b)(6) deposition and the log-in and log-out data.

5 THE COURT: Okay. Fine.

6 So we are back on track with the schedule described in  
7 the January 22nd scheduling order.

8 Counsel, continue your meet and confer process. I am  
9 available to you if you have any further difficulties.

10 Thanks so much.

11 Good luck.

12 MS. HOFFMAN: Thank you.

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